

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 989 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE R.K.ABICHANDANI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

HIMMATSINGJI UDAYSINGJI PARMAR

Versus

M. S. UNIVERSITY

Appearance:

MR BS PATEL for Petitioners
MR S.N. SHELAT, Addl Advocate General with
Mr. NV ANJARIA for Respondent No. 1

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE R.K.ABICHANDANI

Date of decision: 04/05/99

ORAL JUDGEMENT (Per K.G. Balakrishnan, C.J.)

The petitioner is a member of the Senate Committee of M.S. University, Baroda. In August 1991 the respondent University invited applications for appointment of General Clerks, Accounts Clerks, Clerk-typists and the Selection Committee constituted by

the Syndicate of the University selected candidates and Annexure-A list of selected candidates was prepared. It was stated by the Syndicate that the select list would be valid for a period of five years. The select list was approved and published on 16.1.1993. Thereafter, appointments were made from the select list and the petitioner herein challenges the appointment of respondent Nos. 2 to 57 on the ground that the University should not have extended the period of validity of the select list for a period of five years and the candidates who have been appointed against the vacancies that had arisen subsequent to the preparation of the select list were not eligible to get appointment and therefore their appointments are to be quashed. It is also prayed that the respondent University shall be directed not to operate the waiting list.

On behalf of the respondent University an affidavit-in-reply has been filed. It is stated that the select list was approved and published in 1993 and the list had continued for a period of five years and thereafter in January 1998 the University had taken steps to prepare fresh select list by holding test and advertisements were made in May 1998 for filling up of 35 vacancies that were likely to arise in the year 1998-99. At this stage Civil Suit No. 682 of 1998 was filed by 11 employees contending that no fresh test be held pursuant to the Notification dated 21.5.1998 and the University be directed to make appointments from the existing waiting list. Though the University had opposed interim prayer made by the plaintiffs, the Civil Judge (Junior Division), Baroda, granted interim order in favour of the plaintiffs and the respondent University was directed to make appointment from the rank list. The respondent University preferred an appeal before the District Court and had prayed for vacating the interim relief granted by the Civil Judge (Junior Division), Baroda.

We heard learned counsel for the petitioners and the learned counsel for the respondent University. The main prayer sought for by the learned counsel for the petitioner is that the rank list prepared in the year 1993 should not have been allowed to operate for a period of five years and the respondent Nos. 2 to 57 should not have been appointed against vacancies that had arisen subsequent to the preparation of the rank list. The learned counsel for the petitioners relied on the decision of the apex court in the case of ASHOK KUMAR VS. CHAIRMAN, BANKING SERVICE RECRUITMENT BOARD reported in (1996) 1 SCC 283 where the Banking Recruitment Board prepared a select list in 1983 and the notified vacancies

were 3100. Subsequently 6700 vacancies had arisen and these posts were filled up by candidates included in the select list. In this factual background it was held that Article 14 read with Article 16(1) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution. The procedure adopted, therefore, in appointing the persons from the waiting list prepared by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. It may also be noted that in the said case the Supreme Court did not quash the appointments of all the candidates as the affected parties were not made respondents in the proceedings.

In the case of SURINDER SINGH VS. STATE OF PUNJAB reported in AIR 1998 SC 18 the Supreme Court had an occasion to consider the same question where the High Court had cancelled appointments of 7737 candidates for the post of different categories of teachers which was over and above the posts which had been advertised for being filled up. In para 15 at page 21 it was stated "it is in no uncertain words that this court has held that it would be improper exercise of power to make appointments over and above those advertised. It is only in rare and exceptional circumstances and in emergent situation that this rule can be deviated from. It should be clearly spelt out as to under what policy such a decision has been taken. Exercise of such power has to be tested on the touch stone of reasonableness. Before any advertisement is issued, it would, therefore, be incumbent upon the authorities to take into account the existing vacancies and anticipated vacancies. It is not as a matter of course that the authority can fill up more posts than advertised."

In the instant case the rank list was prepared in 1993 and it was made clear that it would be valid for a period of five years. The Syndicate had passed resolution dated 1.5.1993. Neither this resolution nor the Act of the University was challenged by the petitioners within a reasonable time. It is also not clear as to how many posts were advertised for selection. Moreover, in 1998 the University had taken steps to fill

up 35 vacancies that had arisen in the year 1998-99 by making fresh selection but this attempt by the University was foiled by the interim order passed by the Civil Court in Civil Suit No. 682 of 1998. The University was specifically directed to make appointments from the select list which was approved in January 1993. The attempt of the University to get the interim stay vacated has not been successful till today. The matter is pending before the District Court. Under the above circumstance, we do not think that the University has done illegality in making appointments. The proper course open to the petitioners is to get themselves impleaded in the Civil Suit or in the appeal that is pending and pursue the matter further. In a Special Civil Application under Article 226 of the Constitution, the order passed by the Civil Court of competent jurisdiction cannot be assailed. Therefore, the prayer sought for by the petitioners cannot be granted.

Without prejudice to the right of the petitioners, if any, to get themselves impleaded in the suit or in appeal proceedings, this Special Civil Application is rejected. No order as to costs.

00000

[pkn]